

STATE OF MICHIGAN
COURT OF APPEALS

TINA CALAMITA,

Plaintiff-Appellee,

v

CITY OF ST. CLAIR SHORES,

Defendant-Appellant/Third Party
Plaintiff,

and

J J & C, INC.,

Defendant-Appellee/Third Party
Defendant.

UNPUBLISHED

March 9, 2004

No. 236755

Macomb Circuit Court

LC No. 98-003209-NO

ON REMAND

Before: Meter, P.J., and Jansen and Talbot, JJ

PER CURIAM.

This case is before us for the second time on remand from our Supreme Court. *Calamita v City of St. Clair Shores*, 469 Mich 893; 669 NW2d 812 (2003). Initially we reviewed this case pursuant to an order from our Supreme Court granting defendant city of St. Clair Shores' ¹interlocutory appeal of an order denying its motion for summary disposition under MCR 2.116(C)(7) and (10). *Calamita v City of St Clair Shores*, 465 Mich 871; 661 NW2d 578 (2001). We concluded that a genuine issue of material fact was raised with regard to whether a sidewalk was reasonably safe and convenient for public travel. *Calamita v City of St Clair Shores*, unpublished opinion per curiam of the Court of Appeals (Docket No. 236755, issued March 18, 2003).

¹ St. Clair Shores will be referred to as defendant in this opinion and J J & C, Inc., will be referred to by name.

On remand we are directed to consider, pursuant to *Nawrocki v Macomb Co Road Comm*, 463 Mich 143; 615 NW2d 702 (2000), whether defendant breached its duty to maintain the sidewalk in reasonable repair. *Calamita, supra*, 469 Mich at 812.² We reverse and remand, as no question of fact exists as to whether defendant breached its duty to maintain the sidewalk, at issue, in reasonable repair.

Determination of the applicability of the highway exception is a question of law subject to de novo consideration on appeal. *Meek v Dep't of Transportation*, 240 Mich App 105, 110; 610 NW2d 250 (2000). Generally, all governmental agencies are immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407; *Collins v City of Ferndale*, 234 Mich App 625, 628; 599 NW2d 757 (1999). The term "governmental agency" is defined to include municipalities such as defendant. *Weakley v Dearborn Heights (On Remand)*, 246 Mich App 322, 325; 632 NW2d 177 (2001). The immunity conferred on governmental agencies is broad. *Robinson v Detroit*, 462 Mich 439, 455; 613 NW2d 307 (2000). However, there are several narrowly drawn exceptions to governmental immunity, including the highway³ exception set forth in MCL 691.1402(1), which reads, in pertinent part:

[E]ach governmental agency having jurisdiction over any highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. . . . The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks or any other installation outside of the improved portion of the highway designed for vehicular travel.

In *Nawrocki, supra* at 160, our Supreme Court clarified a governmental agency's duty under

² Specifically, our Supreme Court indicated:

[W]e VACATE the Court of Appeals judgment, and REMAND this case to the Court of Appeals for consideration of this Court's decision in *Nawrocki v Macomb Co Road Comm*, 463 Mich 143, 615 NW2d 702 (2000), for the reason that the panel erroneously concluded that Appellant City of St. Clair Shores had a duty to maintain its sidewalks in a condition reasonably safe for public travel. In *Nawrocki v Macomb Co Road Comm*, this Court held that the statutory reference to keeping highways in a condition reasonably safe and fit for travel does not set forth a separate duty to keep the highway "reasonably safe", but instead, the local government's duty is to "maintain the highway in reasonable repair." [*Calamita, supra*, 469 Mich at 812.]

³ "Highway" is defined in MCL 691.1401(e) as "a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway."

MCL 691.1402(1) as follows:

The first sentence of the statutory clause, crucial in determining the scope of the highway exception, describes the basic duty imposed on all governmental agencies, including the state, having jurisdiction over any highway: "[to] maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." This sentence establishes the duty to keep the highway in reasonable repair. The phrase "so that it is reasonably safe and convenient for public travel" refers to the duty to maintain and repair. The plain language of this phrase thus states the desired outcome of reasonably repairing and maintaining the highway; it does not establish a second duty to keep the highway "reasonably safe." *Pick*, 451 Mich at 635-636 (RILEY, J., dissenting).

No action may be maintained under the highway exception unless it is clearly within the scope and meaning of the statute. *Scheurman v Dep't of Transportation*, 434 Mich 619, 630; 456 NW2d 66 (1990). The highway exception to immunity is narrowly construed. *Hatch v Grand Haven Charter Twp*, 461 Mich 457, 464; 606 NW2d 633 (2000). Because defendant is a municipality, its duty with regard to a highway extends to the sidewalk. MCL 691.1401(e); *Ali v City of Detroit*, 218 Mich App 581, 588; 554 NW2d 384 (1996).⁴ Thus, defendant has a statutory obligation to keep a sidewalk in "reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1); see also *Nawrocki*, *supra* at 160 (indicating that only one duty is imposed, which is to "maintain the highway in reasonable repair"). "This means that municipalities have an obligation, if necessary, to actively perform repair work to keep such sidewalks in reasonable repair." *Jones v Enertel, Inc*, 467 Mich 266, 268; 650 NW2d 334 (2002).

In our previous opinion we provided the following summary of the facts:

Plaintiff's injuries occurred when she was running near the intersection of Masonic and Harper in St. Clair Shores on the evening of January 2, 1998. Plaintiff, resuming her training regimen after the holidays, was running on a course that she and her husband had measured out through their neighborhood. Earlier that day, construction and excavation work had been performed by defendant City of St. Clair Shores and its contractor, third-party defendant J J & C, to repair a broken water/sewer line in the area adjacent to the sidewalk. As a result, the heavy construction equipment had covered portions of the sidewalk with slippery, wet mud. However, no signs or protective devices were placed in the area warning about the muddy condition of the sidewalk. As plaintiff was running on the sidewalk along Masonic "at a fast clip," in the dark, she slipped on the mud-covered sidewalk, sustaining several broken bones and other injuries to her left hand when she fell to the pavement.

⁴ We note that MCL 691.1402a is not applicable as the injury in question occurred in January 1998, and the limitations provided in MCL 691.1402a are only effective as to claims arising on or after December 21, 1999.

Plaintiff's allegation is that her injuries were caused when she slipped because of a mud accumulation on the sidewalk, which had been left there by J J & C. In the complaint, plaintiff does not allege that the sidewalk was in need of repair, but only that mud had accumulated on the sidewalk.

Because MCL 691.1402(1) only requires defendant to maintain the sidewalk "in reasonable repair," plaintiff's claim must fail. *Nawrocki, supra* at 160. "Municipalities have an obligation, if necessary, to actively perform repair work to keep such sidewalks in reasonable repair." *Jones, supra* at 268. Plaintiff has alleged no deficiency in the sidewalk requiring repair. Upon a de novo review, we find that there is no genuine issue of material fact as to whether defendant breached its duty to maintain the sidewalk, at issue, in reasonable repair. Consequently, the trial court erred in denying defendant's motion for summary disposition.

Reversed and remanded for entry of summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Michael J. Talbot